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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,378	12/12/2003	Nicolas Voute	2035.008A	1697

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HESLIN ROTHENBERG FARLEY & MESITI PC  
5 COLUMBIA CIRCLE  
ALBANY, NY 12203

EXAMINER
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DOERRLER, WILLIAM CHARLES

ART UNIT	PAPER NUMBER
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3744

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/735,378

Applicant(s)

VOUTE ET AL.

Examiner

William C. Doerrler

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication; even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-18,20-32,34,36 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-18,20-32,34,36 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 1-6,8-18,20-32,34,36 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 5 of both claims 1 and 14, "when present" is confusing. It would be clearer as -- when the container is present--. The last phrase of claims 1 and 14, "wherein information...", does not impart any structural limitations to the apparatus claims.

Likewise in method claim 27, it is merely claimed that information "is deducible", with no actual step of deducing any information. It is also noted that "sized to simulate", bears little meaning as something can be simulated in larger or smaller scale and any facet can be simulated, such as electrical conduction through the containers. The claims not specifically mentioned above depend from unclear claims, so they are unclear by their association.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,8,9,12-16,20,24-32,34,36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Benders (3,586,097).

Benders shows in figure 5 an apparatus having multiple chambers with opposing surfaces which are in contact with heat transfer pipes (51) winding around the surface, with the width of the chamber designed to closely match the width of a bloodbag. The device of Benders can be used to both freeze and thaw a bioproduct. The dimensions of the bloodbag will be able to simulate a cross section of some larger container.

Applicant has not claimed that one dimension (length) of the smaller container is the same size as the width of a larger bag, merely that the larger bag is simulated.

Characteristics can be simulated in larger, smaller or the same size container. The bag of Bender will simulate some characteristic of some larger bag. Regarding the limitation that the container is "coupleable" to at least one driving device for freezing or thawing, the containers of Bender are thermally coupled to the heat exchanging system. Since the cooling/heating system of Bender comprising means to thermally treat the heat transfer fluid, as well as circulate it, the means to thermally treat the biological fluid are thermally coupled to the biological fluid containers.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benders in view of Faust et al (3,952,536, cited in the IDS).

Benders discloses applicant's basic inventive concept, an apparatus to transfer heat to a contained bioproduct with surfaces contacting the container of material, substantially as claimed with the exception of using clamping means to hold the containers during cooling. Faust et al show clamping means 23 which serve to clamp the containers in place during cooling. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Faust et al to modify the thermal treatment device of Benders by using clamping means to hold a plurality of bioproduct containers in place during cooling to ensure proper thermal conduction paths.

Claims 10 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benders in view of Lavender.

Benders discloses applicant's basic inventive concept, an apparatus to transfer heat to a contained bioproduct with surfaces contacting the container of material, substantially as claimed with the exception of dividers in the cooling unit to produce cooling cells. Lavender shows these features to be old in the art (figure 1 shows the dividers). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention from the teaching of Lavender to modify the thermal treatment device of Benders by using dividers to produce individual treatment zones which are easily loaded and unloaded. In regard to claim 23, it is noted that the dividers of Lavender may be removed. It will require some time and tools, but the divider is nevertheless, removable.

***Allowable Subject Matter***

Claims 6,11,18 and 23 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 10-19-2006 have been fully considered but they are not persuasive. The independent claims are still unclear as they are comparing a claimed system to an undefined, non-claimed system in an undefined, non-claimed relationship. Applicant needs to more clearly define the larger system and the relationship between the claimed device and the larger system. Nearly any system can be said to simulate a different system in some way, as long as the two systems are performing the same function. Bender is not identical to applicant's disclosed device and does not clearly state any relationship to a larger system. Claims that can be interpreted broadly however, allow the rejection to stand. It is noted that the subject matter in claims 33,35 and 37 defined the relationship between the current system and the larger system and would have made the independent claims allowable.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William C. Doerrler whose telephone number is (571) 272-4807. The examiner can normally be reached on Monday-Friday 6:30-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on (571) 272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William C Doerrier  
Primary Examiner  
Art Unit 3744

WCD